April 1, 2025

The Honorable Susan R. Donovan
Of the House Health and Human Services Committee, Chair
Rhode Island State House
82 Smith St., Providence, RI 02903

RE: AHIP Comments on H.5172, An Act Relating to Insurance – The Transparency and Accountability in Artificial Intelligence Use by Health Insurers to Manage Coverage and Claims Act – OPPOSE

To Chair Donovan and Members of the House Health and Human Services Committee,

On behalf of AHIP, thank you for the opportunity to comment on H.5172, legislation that would regulate the use of artificial intelligence by health insurers to manage coverage and claims.

Health plans are using AI tools today to improve consumer experiences, improve care and outcomes, streamline administrative processes and reduce costs. Example use cases include:

- *Consumers:* Supporting call center interactions and offering consumers convenient, around the clock access to interactive, personal support, and creating apps that provide financial estimates and connect consumers to care.
- *Clinical:* Identifying gaps in care, predicting patient risks, monitoring for adverse outcomes, and understanding disease pathways and likely treatment outcomes.
- *Administrative* Reducing costs, speeding up claims processing, automating prior authorization (PA) *approvals*, and identifying potential fraud and abuse.

As more health, wellness, and medical products and services incorporate AI, it is important to create balanced policies that promote innovation while protecting patients. As state policymakers address AI, it is essential to:

- **Partner with Federal Policymakers.** States should partner with federal policymakers to develop a uniform, national, risk-based AI framework that relies on national standards that ensure equal protections, reduce burdens, bolster national security, while protecting consumer access and benefits across the healthcare system. Governor Jared Polis' signing statement on Colorado SB 24-205 stated, *"…the important work of protecting consumers…is better considered and applied by the federal government to limit varied compliance burdens on innovators and ensure access to life-saving and money-saving AI technologies for consumers."*[1] A patchwork of state laws would result in conflicting policies, consumer confusion, increase compliance costs, and limit access to technology that could improve health care outcomes and affordability.

- **Rely on Existing Laws.** Entities regulated under state insurance laws should generally be exempt from additional state AI legislation. States should build on existing protections like the Health Insurance Portability and Accountability Act (HIPAA) and insurance licensure rather than duplicate regulations and only establish new laws or regulations to address novel areas to prevent duplication. Adopted in December 2023, the NAIC released a Bulletin to policymakers

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[1] https://www.dwt.com/-/media/files/blogs/artificial-intelligence-law-advisor/2024/05/sb24205-signing-statement.pdf?rev=a902184eafe046cfb615bb047484e11c&hash=213F4C6CDFF52A876011290C24406E7F#:~:text=Today%2C%20with%20reservations%2C%20I%20signed,especially%20at%20the%20national%20level.

and stakeholders outlining how insurers are currently subject to comprehensive federal and state legal and regulatory requirements for AI use. Insurers comply with extensive federal and state laws already in place, including HIPAA, the Affordable Care Act, anti-discrimination laws, and corporate governance, that address health care privacy, security, bias, and other concerns with the implementation of AI. The Department of Business Regulation issued Insurance Bulletin 2024-03 that largely adopted the NAIC Model AI Bulletin on March 15, 2024. Overlapping regulatory structures create complexity, confusion, and unnecessary costs that divert consumer premiums away from care and cause consumer confusion.

- **Define AI Clearly:** States should align with AI-related terminology and definitions (e.g., "Artificial Intelligence," "Machine Learning," "Algorithm") established in nationally accepted standards such as those included in the National Institute of Standards and Technology (NIST) AI Risk Management Framework. Alignment in terminology and definitions provides clarity, facilitates consistent implementation, builds consumer trust, reduces compliance burdens, and supports interoperability in a rapidly evolving field. Section 27-8.3-2(4) defines "artificial intelligence" differently than NIST.

- **Provide High-Level Oversight.** States may require entities to implement AI governance programs for AI system oversight. These provisions should align with the NAIC AI Bulletin, which addresses:
    - AI governance and risk management controls,
    - Internal audit functions, and
    - Reviews of purchased AI systems.

  Overly prescriptive laws will dampen innovation and reduce access to beneficial consumer technologies. The guidelines included in the NAIC AI Bulletin have broad regulatory and industry support following extensive stakeholder review.

- **Promote Risk-Based Standards.** States should not require insurers to seek third-party external reviews. Health insurers may develop AI solutions for their internal business purposes that present minimal risk. They do not generally develop general-purpose AI, sell such applications to others, or use them for direct patient care. Audits, if required, should be risk-based, and focus only on large-scale general-purpose AI (e.g., foundational models) and high-impact AI (e.g., high-risk clinical decisions). While progress is being made, there is no gold standard against which to assess AI policies, procedures, technologies, and their application. Poorly designed audits will fail to identify issues while imposing significant compliance burdens. Reporting, if any, should also be risk-based and aligned with the HIPAA "material change" standard, requiring updates only after significant AI system changes. Comprehensive reporting, as required in Section 27-8.3-3(a), would be cost prohibitive given the wide-ranging use of AI solutions, and annual or other time-based reporting would require significant resources for little to no change.

- **Promote Transparency.** Developers should be required to provide deployers with sufficient information to assess the safety, privacy, security, and other critical factors of an AI solution. Health insurers should not be held liable for unknown factors associated with purchased technology. States should ensure that any disclosure or reporting requirements protect proprietary innovations (e.g., proprietary code and trade secrets). Such protections are absent in H.5172.

- **Refrain from establishing a private right of action (PRA).** Health insurers deploying AI solutions are subjected to robust federal and state oversight. A PRA, found in Section 27.8.3-4(c), will stifle innovation and increase costs without providing additional consumer protections.

- **Permit AI in Prior Authorization**. Policies should support innovative uses of AI in a manner that is safe, secure, ethical, and transparent, including its use in utilization management, such as PA, which ensures care is safe, effective, and evidence based. As technology evolves, AI presents an opportunity to further streamline the use of this vital patient protection tool through:
    - o *Automated Algorithms* – to **approve** requests (denials based on clinical factors are not made without human review);
    - o *Machine Learning* – to automatically retrieve necessary documentation in the electronic health record;
    - o *Natural Language Processing* – to parse clinical notes to identify documentation;
    - o *Image Recognition* – to identify pictures, radiographic films, etc.;
    - o *Generative AI* – to pre-populate the PA request for the clinician to review and submit; and
    - o *Clinical Decision Support* – within the electronic health records to diminish the need for PA by ensuring care is evidenced-based.

    AI can shorten decision making, reduce provider burden, increase administrative efficiency, ensure the safety and quality of care, and enhance affordability for patients. Legislation should not broadly prohibit the use of AI within the PA process where it can support patients' access to care through efficiencies such as near real-time approvals and re-routing requests that necessitate human review of clinical factors. It is critical to remember that in the case of prior authorization, only humans make final determinations resulting in a denial based on clinical factors.

AHIP Recommendations. For these reasons, *AHIP urges the Committee to vote no on H.5172*. Responsible use of AI can increase access to quality care, improve health outcomes, improve the consumer experience, and reduce administrative costs. Balanced AI policies promote innovation, enhance patient care, and protect consumers. Policymakers should prioritize national standards, risk-based approaches, and leverage existing laws while avoiding duplicative regulations, unfeasible mandates, and private rights of action.

AHIP welcomes ongoing collaboration to advance effective, responsible AI legislation that supports patients, providers, purchasers of health care, and insurers.

Sincerely,

America's Health Insurance Plans

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